

HOUSE BILL No. 1027

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.8.

Synopsis: Credit reports. Requires users of credit reporting agencies to promptly provide accurate individual credit information to credit reporting agencies. Authorizes civil and criminal penalties.

Effective: July 1, 2004.

Dickinson

December 4, 2003, read first time and referred to Committee on Financial Institutions.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1027

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2004]:

4 ARTICLE 4.8. CREDIT REPORTS

5 Chapter 1. Applicability, Relation to Federal Laws

6 Sec. 1. This article applies to a person who is regularly engaged
7 in furnishing information concerning a consumer to a consumer
8 reporting agency.

9 Sec. 2. The requirements of this article are in addition to the
10 requirements of the federal Fair Credit Reporting Act, 15 U.S.C.
11 1681 et seq.

12 Chapter 2. Definitions

13 Sec. 1. The definitions in this chapter apply throughout this
14 article.

15 Sec. 2. "Consumer" means an individual.

16 Sec. 3. (a) Except as provided in subsection (b), "consumer
17 report" means a written, an oral, or other communication of

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information by a consumer reporting agency:

(1) concerning a consumer's:

- (A) creditworthiness;
- (B) credit standing;
- (C) credit capacity;
- (D) character;
- (E) general reputation;
- (F) personal characteristics; or
- (G) mode of living; and

(2) that is used or expected to be used or collected in whole or in part for:

- (A) the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes;
- (B) employment purposes; or
- (C) any other purpose authorized under 15 U.S.C. 1681, Section 604.

(b) The term does not include the following:

(1) A report containing information solely as to transactions or experiences between the consumer and the person making the report.

(2) Communication of information described in subdivision (1) among persons related by common ownership or affiliated by corporate control.

(3) Communication of other information among persons related by common ownership or affiliated by corporate control if:

(A) it is clearly and conspicuously disclosed to the consumer that the information may be communicated among those persons; and

(B) the consumer is given the opportunity, before the information is initially communicated, to direct that the information not be communicated among those persons.

(4) Authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

(5) A report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys the person's decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the

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consumer required under 15 U.S.C. 1681, Section 615.

(6) A communication described in 15 U.S.C. 1681, Section 602(o).

Sec. 4. "Consumer reporting agency" means a person that:

(1) for monetary fees or dues, or on a cooperative nonprofit basis, is regularly engaged, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information concerning consumers for the purpose of furnishing consumer reports to third parties; and

(2) uses any means for the purpose of preparing or furnishing consumer reports.

Sec. 5. "Regularly engaged" means a person who furnishes information that is used or collected, in whole or in part, in a consumer report more than:

(1) twenty-five (25) times; or

(2) five (5) times for transactions secured by a dwelling; in the preceding twelve (12) month period.

Chapter 3. Furnishing Information to Consumer Reporting Agencies

Sec. 1. (a) A person may not furnish information concerning a consumer to a consumer reporting agency if the person:

(1) knows; or

(2) consciously avoids knowing;

that the information is inaccurate.

(b) A person may not furnish information concerning a consumer to a consumer reporting agency if:

(1) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(2) the information is inaccurate.

(c) A person who clearly and conspicuously provides the consumer an address for notices referred to in subsection (b)(1) is not subject to subsection (a). However, subsection (b) does not require a person to provide an address.

Sec. 2. A person who:

(1) regularly and in the ordinary course of business furnishes information to one (1) or more consumer reporting agencies about the person's transactions or experiences with a consumer; and

(2) has furnished to a consumer reporting agency information that the person determines is incomplete or inaccurate;

shall, not later than fourteen (14) days after determining that the

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information is incomplete or inaccurate, notify the consumer reporting agency of and provide the consumer reporting agency with the corrections or additional information necessary to make the information complete and accurate.

Sec. 3. A person may not furnish information to any consumer reporting agency, if the completeness or accuracy of the information is in dispute, without notice that the information is disputed.

Sec. 4. A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency concerning a consumer who has a credit account with that person shall notify the agency within fourteen (14) days after the voluntary closure of the account by the consumer.

Sec. 5. A person who furnishes information to a consumer reporting agency regarding a delinquent account:

- (1) being placed for collection;
- (2) charged to profit or loss; or
- (3) subjected to any similar action;

shall, not later than ninety (90) days after furnishing the information, notify the consumer reporting agency of the month and year of the commencement of the delinquency that immediately preceded the action.

Chapter 4. Civil Liability for Willful Noncompliance

Sec. 1. A person who willfully fails to comply with a requirement imposed under this article with respect to a consumer is liable to that consumer for:

- (1) actual damages sustained by the consumer as a result of the failure;
- (2) in the case of an individual obtaining a consumer report under false pretenses or knowingly without a permissible purpose under 15 U.S.C. 1681 et seq., actual damages sustained by the consumer as a result of the failure or one thousand dollars (\$1,000), whichever is greater;
- (3) punitive damages allowed by the court under IC 34-51-3-4; and
- (4) in the case of a successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.

Sec. 2. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this chapter was filed in bad faith or for purposes of harassment, the court shall award reasonable attorney's fees to the

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prevailing party.

Chapter 5. Civil Liability for Negligent Noncompliance

Sec. 1. A person who is negligent in failing to comply with a requirement imposed under this article with respect to a consumer is liable to that consumer for:

(1) actual damages sustained by the consumer as a result of the failure; and

(2) in the case of a successful action to enforce any liability under this section, the costs of the action and reasonable attorney's fees as determined by the court.

Sec. 2. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this chapter was filed in bad faith or for purposes of harassment, the court shall award the prevailing party reasonable attorney's fees.

Chapter 6. Criminal Liability

Sec. 1. A person who knowingly gives false or inaccurate information concerning a consumer that the person is required to disclose under this article commits a Class A misdemeanor.

Sec. 2. A person who knowingly fails to provide information concerning a consumer that the person is required to disclose under this article commits a Class A misdemeanor.

SECTION 2. IC 34-11-2-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4.5. (a) Except as provided in subsection (b), an action created under IC 24-4.8 must be brought within two (2) years after the date on which a violation occurs.

(b) If:

(1) a person has materially and willfully misrepresented or withheld information required under IC 24-4.8 to be disclosed to an individual; and

(2) the misrepresented or withheld information is material to the establishment of the person's liability to the individual under IC 24-4.8;

an action may only be brought under IC 24-4.8 within two (2) years after discovery by the individual of the misrepresentation or withholding of information.

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